Concise Explanatory Statement – UI Tax Rules
Second Engrossed Senate Bill (2ESB) 6097

Comments are arranged by section.

Section 18. RCW 50.29.062 Predecessor/Successor Employers.

Comments: Referring to WAC 192-300-050.

- When defining "substantial continuity of ownership," use the same or similar standard that is used by the Departments of L&I and Revenue.
- The main goal of this statute was to try to impact those businesses that had established an experience tax rate, they go out of business and then come back into business as a "new" business. Even though the new business is basically the same as the old business (same owners), the business is now eligible for a new employer tax rate which is the industry average.
- The legislature had the opportunity to adopt a definition of "substantial continuity of ownership and management" which was rejected. Look at what the legislature had rejected before adopting a definition.
- This is an area (substantial continuity of ownership) that the U.S. Department of Labor is reviewing at the federal level.
- It was not the intent of the legislation to penalize "joint venture" projects where two or more companies come together to create a separate company to build a specific project and then the company goes away.
- I don't think we need to recreate "the wheel" here (defining substantial continuity of ownership), the intent is to use a working model that has been created by the Departments of L&I or Revenue, and do what they do.
- The Department has proposed to define "substantial continuity of ownership" as existing if "one or more persons, entities, or other organizations that own or manage the business participates in the successor operation after an acquisition or change in form." Instead of "participates in the successor operation," the rule should insert that the business participates "in the ownership or management" of the successor operation.

Reasons Not Incorporated in Final Rule: The department tabled adoption of a definition of "substantial continuity of ownership or management" pending federal legislation.

Section 21. RCW 50.29.020 Relief of benefit charges.

Comment: WAC 192-320-070. The language in the rule listing reasons for separation that are not attributable to the employer should be modified. As written, some legislators and employers read it to mean that claimants could receive benefits if they quit work because they were in jail, were starting school, etc.

Incorporated in Final Rule: Language was added clarifying that the rule applies to situations where the claimant quit work without good cause and subsequently requalified for benefits through work and earnings. The reasons are considered not attributable to the employer for purposes of granting relief of benefit charges to the separating employer.

Comments: Referring to WAC 192-320-075

- The intent, especially with the voluntary quits, is that the employer who caused the quit was going to be the employer who was charged for all the benefits. It would no longer be a proportionality issue.
- If a claimant accepts a new job and goes to work for the next employer, then that employer lays the claimant off, that's the separating employer. The separating employer should be charged for all benefits for that individual because they are the reason the person is unemployed, not the previous employer.
- The purpose was to say that the costs should not be socialized among the employers who had no part in the person drawing benefits.
- It's that last employer, the separating employer's, responsibility to be charged for all of these benefits. If the business had asked for relief of benefit charges, then these charges would have been spread over everybody else and that is what everyone was objecting to.
- If a claimant goes to work for the next employer and earned wages from that employer, that separating employer is charged 100 percent for the dislocation. For whatever reason, whether it is a layoff or domestic violence or some other cause.
- What we are talking about is the charging of the benefits of a person who leaves one employer to get another job, works for them (the second employer) for a while, then quits or gets laid off (by the second employer). The second employer would be the separating employer and would be charged all of the benefits.
- In a separate situation where you've got one employee laid off and one employee quit, the intent was to charge all of the quit "stuff" to the quit employer and do what you would normally do on all the other benefits.
- It was the intent of the legislation to charge the unemployment insurance cost to the last employer, what we call the "separating employer." Our intent was that the employer who "stole the employee" from another employer and put this individual to work, and then laid this person off, that this separating employer caused the unemployment and should be charged 100 percent.
- This is all about socialized costs. We wanted to take all those costs that are socialized out. Because an individual who leaves one employer, goes to another employer and then gets laid off, we want to get rid of the socialized costs and charge to the employer that caused the unemployment.

Incorporated in Final Rule: The final rule provides that 100% of benefits shall be charged to the separating employer if that employer is the last employer, a base period employer, and a contribution-paying employer.

Comment: WAC 192-320-075. The Department's proposed rule requiring that the separating employer be a "base year employer" conflicts with the intent of the legislation. The business coalition was unified in its belief that the employer that causes the designated voluntary quit should be solely responsible for all charges. The Department seems to suggest that if the separating employer is a "non-base year employer," the charges for that quit would either be proportionally laid at the feet of the base-year employers (who have no responsibility for the unemployment) or will be socialized. The Department should remove the "base-year employer" test from the rules.

Reasons Not Incorporated in Final Rule: Although earlier drafts of the bill did not limit this section to base period employers, as passed the statute applies to "a covered contribution paying **base year** employer." (Emphasis added)

Comment: WAC 192-320-075. The Department should ensure greater scrutiny to confirm that the claimant actually quit one job to accept a job with the employer from which they have now separated.

Reasons Not Incorporated in Final Rule: Although not appropriate for rule making, the department has implemented procedures to determine whether the separation from the previous employer was due to an offer of work from a subsequent employer.

Section 22. RCW 50.12.220 Employer Penalties.

Comment: WAC 192-310-030. The business community supports the adoption of a range of penalties. You (the Department) have a good handle on what "timely" and "complete" means and putting different penalties in place for employers submitting reports 30 days late versus 60 or 90 days late.

Incorporated in Final Rule: The final rule contains a range of penalties based on first, second, or third occurrence (rather than on the lateness of the report).

Comment: WAC 192-310-030. A third party is an agent of the employer and reports that come from a third party really come from the employer. A business cannot shirk its responsibility by saying it was the bookkeeper's fault or it was the fault of the insurance company. Penalties for knowingly misrepresenting the amount of payroll accrue to the employer.

Reasons Not Incorporated in Final Rule: The department has tabled clarification of the role of third party representatives for rule making at a later date.

Comment: WAC 192-310-030. The employer community would welcome the extent that the Department can mirror the penalties of the Department of L&I when an employer knowingly misrepresents information (e.g., their amount of payroll).

Reasons Not Incorporated in Final Rule: The penalty for knowingly misrepresenting the amount of payroll is set by statute. The rule merely clarifies that the penalty is in addition to the amount of taxes due from the employer.

Comment: WAC 192-320-030. The Department has a lot of leeway as to what may be considered good cause for allowing a waiver to an employer penalty. Having a list of what situations might constitute good cause for wavier would be helpful to the business community.

Incorporated in Final Rule: The rule contains examples of situations in which an employer may qualify for a waiver of penalties.

Comment: WAC 192-340-100. As for the costs of reasonable expenses for auditing, the Department should be careful not to charge an employer for expenses that, in theory, the Department of Labor is already paying for with federal funds.

Incorporated in Final Rule: The expenses listed in the rule can be reimbursed by employers without creating a federal audit exception.

Comment: Amend WAC 192-310-010 by deleting subsection (3). This section is completely unacceptable to the business community and should be removed.

Incorporated in Final Rule: The requested change has been made.